IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1510 OF 2004

Neel Mahendra Murali Kumar. .. .. Petitioner

V/s.

The State of Maharashtra & ors. .. Respondents

Mr.Mihir Desai for Petitioner.

Ms.U.V. Kejriwal, APP for Res.Nos.1 to 3.

Mr.R.F.Lambay for Respondent No.4.

CORAM : H.L. GOKHALE &

SMT.V.K.TAHILRAMANI, JJ.

DATED : 11th August 2004

P.C. :

1. This Petition is filed by a son of one Navleen Kumar who was murdered on 19th June 2002. Respondent Nos.4, 5 and 6 are the three Accused in C.R. No.1-178 of 2002 registered by the Nallasopara Police Station in connection with that incident. Out of these three Accused, Respondent No.5 one Ganesh Patil is on bail. Respondent No.6-Samir @ Sami Ansari is in custody under the

said C.R. As far as Respondent No.4 is concerned, he is a convict in an earlier offence and undergoing his imprisonment in Yerwada jail.

2. The grievance of the Petitioner is that the Prosecuting Agency has not had sufficient time to complete the investigation against Respondent No.4-Manik Patil. In the meanwhile, the learned Sessions Judge at Palghar is insisting on proceeding with the trial. The Petitioner fears that if the trial proceeds now against Respondent Nos.5 and 6, it will proceed in a truncated manner and there could be difficulties in ultimately convicting the Accused.

3. Ms.Kejriwal, learned APP for Respondent Nos.1, 2 and 3, supports this submission of the Petitioner. She is instructed by the Investigating Officer one Mr.Kamble from State C.I.D. She states that from time to time efforts were made to obtain the custody of Respondent No.4, but for some reason or the other, on medical grounds, Respondent No.4 was not available to the Investigating Agency for more than a week. That has been the history as far as the investigation against Respondent No.4 is concerned. She, therefore, requests and states that if time is granted to the Prosecuting Agency, they will

complete the remaining part of the investigation within two months from today. Within this period, they will obtain the custody of Respondent No.4 for the remaining period which is available to them under the Statute for necessary interrogation.

4. Mr.Lambay, learned Counsel appearing for Respondent No.4, submits that there has been lethargy on the part of the Investigating Agency. They had sufficient time and they have made wrong statements on earlier occasions before the Court. It is only because of this kind of situation that the learned Sessions Judge has ultimately observed that the trial must proceed now.

5. We appreciate the submissions made by Mr.Lambe. At the same time, we cannot ignore that, in fact, a prejudice will be caused to Respondent Nos.5 and 6 as well as to Respondent No.4 also, if the trial proceeds in a truncated manner. Respondent Nos.5 and 6 will take defence on a particular line. That will get disclosed in a cross-examination of the witnesses of the prosecution. That will, in fact, create a difficulty for Respondent No.4. Therefore, it is in the interest of all the Accused as well that the trial proceeds together.

6. In the circumstances, we accept the request made by Ms.Kejriwal, learned APP. The trial of Sessions Case No.95 of 2003 will stand stayed for a further period of two months i.e. until 11th October 2004. Within this period, it will be open to the Prosecuting Agency to get the custody of Respondent No.4 and complete the investigation and also to file an additional charge-sheet on the basis of the material that becomes available to them.

7. In view of the above order, the Petition is disposed of.

8. Authenticated copy of this order be provided.

_____**(H.L. GOKHALE, J.)**

(V.K.TAHILRAMANI, J.)